

The Senate Economic Development Committee offered the following substitute to SB 328:

A BILL TO BE ENTITLED
AN ACT

To amend Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, so as to require electric suppliers to provide cable companies nondiscriminatory access to electrical facilities on just and reasonable rates, terms, and conditions; to provide a short title; to provide legislative findings; to provide definitions; to provide procedures and remedies; to provide for a repeal under certain circumstances; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 46 of the Official Code of Georgia Annotated, relating to public utilities and public transportation, is amended by adding a new chapter to read as follows:

"CHAPTER 3B.

46-3B-1.

This chapter shall be known and may be cited as the 'Georgia Broadband Deployment and Fair Access to Electric Facilities Act.'

46-3B-2.

The General Assembly finds that:

(1) The deployment of facilities based communications services should be promoted;

(2) Cable companies should be encouraged to attach their facilities to poles already existing in current rights of way rather than acquiring or condemning additional property to construct duplicative sets of poles and to promote the deployment of facilities based communications services; and

(3) The provisions set forth in this chapter will encourage colocation of facilities in order to discourage the unnecessary use of eminent domain and promote the deployment of facilities based communications services.

46-3B-3.

As used in this chapter, the term:

(1) 'Cable attachment' means any attachment by a cable company to an electrical facility.

(2) 'Cable company' means a cable television operator as defined in Section 602(5) of the federal Communications Act of 1934 that offers or provides, or intends to offer or provide, cable television service, including any broadband cable communications services, voice service, Internet access service, or any other service similar to such services, including the transport or delivery of services between or to cable companies or end users.

(3) 'Electrical facility' means any pole, duct, conduit, or right of way owned or controlled by an electric supplier.

(4) 'Electric supplier' means any electric membership corporation, including without limitation any corporation or utility that is cooperatively organized, furnishing retail electric service in this state and any municipality which furnishes such retail electric service within this state.

(5) 'Make ready' means all work necessary or appropriate to make space for or otherwise accommodate new, additional, or changed cable attachments, including, but not limited to, necessary or appropriate rearrangements, removal and replacement of the electrical facility or cable attachments, and other work related thereto.

46-3B-4.

(a) An electric supplier shall provide cable companies with nondiscriminatory access to all electrical facilities on just and reasonable rates, terms, and conditions.

(b) An electric supplier shall approve or deny in writing any cable attachment request no later than 15 business days after the receipt thereof; and if make-ready construction by the electric supplier is required, an estimate for such costs shall be provided to the requesting cable company. Any denial shall include, in sufficient detail, the grounds therefor not inconsistent with the provisions of this Code section. An electric supplier may deny a cable company access to its electrical facilities on a nondiscriminatory basis if there is insufficient capacity and for reasons of safety, reliability, and generally applicable engineering principles. No electric supplier may deny a cable company access to its electrical facilities on the ground that there is insufficient capacity or for reasons of safety, reliability, and generally applicable engineering principles if:

58 (1) Those limitations can be remedied by setting a new pole or other electrical facility
59 or by rearranging or otherwise reengineering the electrical facilities; and

60 (2) The cable company agrees to pay the reasonable, actual, and verifiably comparable
61 costs of setting a new pole or other electrical facility or rearranging or otherwise
62 reengineering the electrical facilities to resolve those capacity, safety, reliability, or
63 engineering issues.

64 (c) A cable company that requests a cable attachment shall be held responsible for the
65 reasonable, actual, and verifiable costs incurred by the electric supplier or any other
66 attaching entity in accommodating the request.

67 (d) A cable company with an existing cable attachment shall not be required to bear any
68 of the costs of rearranging or relocating its cable attachment if such rearrangement or
69 relocation is required as the result of an additional attachment or the adjustment of an
70 existing attachment sought by any other entity or sought by an electric supplier.

71 (e) If make ready is required by an electric supplier, such make-ready work shall be
72 commenced by the electric supplier within 20 business days of the electric supplier's receipt
73 of consent to its make-ready cost estimate by the requesting cable company; and the
74 electric supplier shall ensure the make-ready work performed is consistent with the electric
75 supplier's standard work order process. The electric supplier shall use its best efforts to
76 complete all make-ready work within 60 business days of receipt of consent to the
77 make-ready work estimate by the requesting cable company.

78 (f) Following receipt of a request from a cable company, an electric supplier shall
79 negotiate in good faith the rates, terms, and conditions for access to and the use of the
80 electrical facilities. Following a request from a cable company that is a party to an existing
81 agreement with an electric supplier or a request from an electric supplier that is a party to
82 an existing agreement with a cable company, made either pursuant to the terms of the
83 existing agreement or within 90 days prior to or following the end of the term of the
84 agreement, the parties to the existing agreement shall negotiate in good faith the rates,
85 terms, and conditions for the continued access to and use of the electrical facilities. In the
86 event the parties are unable to reach agreement within 90 days of a request to negotiate or
87 if either party believes in good faith that an impasse has been reached prior to the
88 expiration of the 90 day period, either party may bring an action to the commission as
89 provided in Code Section 46-3B-5.

90 (g) All rental rates, including rent, fees, and charges demanded, invoiced, or assessed by
91 an electric supplier, shall be just, reasonable, and cost based. An electric supplier shall not
92 increase its rental rates more than once annually and then only:

93 (1) If the pole attachment agreement between the electric supplier and the cable company
94 allows for such increases; and

(2) After providing the cable company with at least 120 days' advance written notice containing justification for the proposed increase. Every invoice provided by an electric supplier to a cable company shall be itemized in sufficient detail and have appropriate supporting documentation attached to permit the cable company to ascertain the basis of the rates, fees, and charges therein.

(h) For a year for which there is a pole count or audit, the following adjustment shall be made:

(1) The difference between the number of poles found by the pole audit for the year in question and the number of attachments for which the attacher was most recently invoiced for adjustment payments shall be prorated evenly based on the assumption that such attacher's attachments were added evenly over the period since the last pole audit; and

(2) If the number of poles in the previous annual rental invoice is greater than the number found by the pole audit in the current year, then the cable company shall be entitled to a credit or pro rata refund from the electric supplier.

(i) Except as otherwise provided in subsection (l) of this Code section, an electric supplier shall not impose requirements or conditions upon overloading activities of a cable company.

(j) An electric supplier shall not require any cable company having or seeking attachments to indemnify or insure such electric supplier from or against any losses, damages, claims for damages, or other liability to the extent that such arises from the negligence or willful misconduct of the electric supplier or its agents, employees, contractors, or licensees as a condition to granting access or making attachments.

(k) The electric supplier has the option to perform periodic safety inspections and pole inventories not more than once every five years, unless otherwise mutually agreed by the parties, to determine any safety violations caused by an attacher upon 180 days' advance written notice. Such notice shall describe the scope of the inspection, and the electric supplier shall use best efforts to get all entities with attachments to participate in the safety inspection. The cable company shall pay a pro rata share of the electric supplier's inspection costs and shall incur its own costs to participate in such periodic safety inspections. The cable company's pro rata share of the electric supplier's cost shall be equal to the percentage of the total violations related to the cable company's cable attachments as identified during the safety inspection unless the cable company can clearly demonstrate that it did not cause the violation.

(l) When a cable company makes cable attachments that do not comply with generally applicable engineering rules, the electric supplier shall provide written notice of the

noncompliant cable attachments. In the event of a noncompliant cable attachment that poses an imminent safety risk, the cable company shall immediately bring such cable attachment into compliance. In all other instances of noncompliant cable attachments, the cable company shall, within 60 days following the written notice, either contest the notice of noncompliance in writing or bring its cable attachments into compliance. If the work required to bring the cable attachments into compliance is not reasonably capable of being completed within the 60 day period, the period for compliance shall be extended as may be deemed reasonable under the circumstances so long as the cable company promptly commences and diligently pursues within the 60 day period such actions as are reasonably necessary to make the cable attachments compliant.

(m) No electric supplier shall enter into any contract or arrangement pertaining to a cable company's cable attachments to or use of electrical facilities or its books and records if any part of the compensation or other benefits paid or payable for the services of the private examining or collecting firm conducting the examination is contingent upon or otherwise related to the amount of tax, interest, fee, rent, charge, court cost, or penalty assessed against or collected from the cable company. Any such contract or arrangement, if made or entered into, is void and unenforceable. Any assessment or preliminary assessment of taxes, penalties, fees, rent, charges, court costs, or interest proposed or asserted by, or based upon the recommendation of, a private examining or collecting firm compensated under any such contract or arrangement shall be void and unenforceable.

(n) An electric supplier shall provide cable companies no less than 120 days' written notice prior to removal of cable attachments to electrical facilities or termination of any service to those facilities which arises out of a breach of a rate, term, or condition of a cable attachment agreement. If any such breach of rate, term, or condition of cable attachment is disputed by a cable company, the cable company may bring an action to the commission as provided in Code Section 46-3B-5.

(o) All other terms and provisions of any agreement with electric suppliers governing or affecting a cable company's cable attachments, including any rate, term, or condition governing audits, inspections, termination, security bond, and insurance requirements, shall be just, reasonable, and consistent with the provisions of this chapter. An electric supplier shall not require any cable company having or seeking cable attachments to be subject to any unilateral changes to any operational procedures, practices, or rules in an existing agreement or otherwise without first being provided a reasonable opportunity to review, accept, or dispute the change; and any such operational procedures, practices, or rules shall not be unduly burdensome.

46-3B-5.

(a)(1) Any electric supplier or cable company that is aggrieved by conduct of another party that is in violation of any provision of this chapter may file a complaint with the commission. The commission shall have exclusive jurisdiction over such actions.

(2) Upon the complaint of an electric supplier or a cable company that is aggrieved by conduct of another party that is in violation of any provision of this chapter, the commission shall have the authority and exclusive jurisdiction over such actions, after notice to all affected electric suppliers, cable companies, and other interested parties and after a hearing, to enforce the provisions of this chapter by appropriate orders.

(3) The complaint shall state with specificity the conduct complained of and all information and argument relied on to justify said claim.

(4) The respondent shall have 30 days from the date the complaint was filed to file a response.

(5) The complainant shall have 20 days from the date of the response to file a reply.

(6) The burden of proof shall be on the party advocating a deviation from this chapter or on the party claiming that the rate, term, or condition complained of is not just and reasonable.

(b) The commission shall resolve any dispute identified in the pleadings consistent with the public interest and this chapter, taking into consideration and applying such factors and evidence that may be presented by a party, including without limitation the rules and regulations applicable to cable attachments under Section 224 of the federal Communications Act of 1934, as amended, or the rules and regulations of any state certified to regulate cable attachments under Section 224(c) of the federal Communications Act of 1934, as amended.

(c) The commission shall resolve a complaint within 180 days of the commencement of the action. The commission may adopt such rules as it deems necessary to implement its jurisdiction and authority under this chapter.

(d) The parties shall pay any reasonable third-party expenses incurred by the commission in resolving a complaint. At the time the commission determines that third-party expenses will be required, the commission shall issue an order setting forth the scope and budget for such expenses. All invoices relating to the expenses shall be subject to commission review and approval, and no party shall be required to pay any invoice not approved by the commission.

199 46-3B-6.

200 (a) This chapter shall not constitute certification as defined by federal law. If a court of
201 competent jurisdiction determines that this chapter is tantamount to certification, this
202 chapter shall automatically stand repealed and shall be null and void.

203 (b) This chapter shall not apply to any cable attachment regulated by the Federal
204 Communications Commission under Section 224 of the federal Communications Act of
205 1934 as amended.

206 (c) This chapter does not affect and is not intended to affect the powers of the Department
207 of Transportation with respect to the state highway system regarding any utility facility
208 which is or may be installed within the limits of any public road or street right of way."

209 **SECTION 2.**

210 This Act shall become effective upon its approval by the Governor or upon its becoming law
211 without such approval.

212 **SECTION 3.**

213 All laws and parts of laws in conflict with this Act are repealed.